



Comptroller General
of the United States

Washington, D.C. 20548

Mrs. Perry

Decision

Matter of: Engineered Air Systems, Inc.

File: B-237211

Date: December 26, 1989

DIGEST

Protest against award of a contract to a bidder that failed to complete and sign Certificate of Procurement Integrity is denied where bids were opened prior to December 1, 1989, but award has not been made, since the requirement for a Certificate, which implements section 27(d)(1) of the Office of Federal Procurement Policy Act Amendments of 1988, has been suspended from December 1, 1989 to November 30, 1990, by section 507 of the Ethics Reform Act of 1989.

DECISION

Engineered Air Systems, Inc. (EASI) protests the award of a contract to any other bidder under invitation for bids (IFB) No. DAAK01-89-B-0025 issued by the Department of the Army for tactical water distribution systems. EASI alleges that its bid is the only one eligible for award since it was the only bidder that provided a signed and completed Procurement Integrity Certificate with its bid, notwithstanding the agency's failure to request it in the solicitation.

We deny the protest.

The solicitation, issued February 9, 1989, was amended 9 times, but did not at any time incorporate the Certificate of Procurement Integrity Clause, Federal Acquisition Regulation (FAR) § 52.203-8, as required by FAR § 3.104-10 (FAC 84-47). This clause implements section 27(d)(1) of the Office of Federal Procurement Policy Act Amendments of 1988 (OFPP Act), Pub. L. No. 100-679, 101 Stat. 4055, 4064 (1988), and is applicable to contracts awarded on or after July 16, 1989.

The clause essentially provides that an agency shall not award a contract unless a bidder or offeror certifies in writing that neither it nor its employees has any information concerning violations or possible violations of

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the OFPP Act pertaining to the procurement. The activities prohibited by the Act involve soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or discussing proprietary or source selection information. Under FAR § 52.203-8, bidders are required to list all violations or possible violations of the Act, or enter "none" if none exists, on the Procurement Integrity Certificate and sign the document.

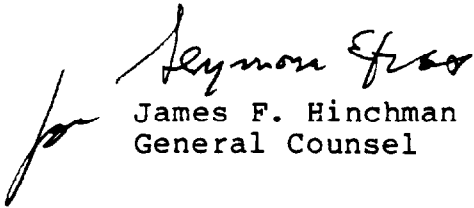
The Army received six bids at bid opening on September 28. The apparent low through fourth low bidders were, respectively, R. B. Pump, Inc.; Angus Fire Armour Corporation; Keco Industries; and EASI. EASI filed a protest in our Office on October 2, alleging that it should be awarded the contract because it is the low responsive bidder since no lower bidder submitted a signed and completed Procurement Integrity Certificate.

Effective December 1, 1989, section 27 of the OFPP Act was suspended by section 507 of the Ethics Reform Act of 1989, Pub. L. No. 101-194, Stat. ____ (1989), which provides that section 27 "shall have no force or effect during the period beginning on the day after the date of enactment of this Act and ending one year after such day." Accordingly, agencies are not to include the Certificate of Procurement Integrity clauses at FAR §§ 52.203-8, 52.203-9, 52.203-10 and 52.327-9 in any solicitation issued on or after December 1989 through November 30, 1990. The FAR provisions affected by the suspension were changed to provide that agencies are to amend solicitations issued prior to December 1, 1989, for which bids have not been opened or proposals received before that date, to delete the Certificate provision and clauses. In the case of solicitations for which bids have been opened or offers received prior to December 1, 1989, but where award has not been made--as here--agencies are to disregard the lack of a Certificate in determining the eligibility for award and delete the Certificate clauses by administrative change. 54 Fed. Reg. 50,713 (1989); Hampton Roads Leasing, Inc., B-236564, B-236564.2, Dec. 11, 1989, 89-2 CPD ¶ ____.

EASI alleges that the suspension of the OFPP Act does not eliminate the prejudice to EASI resulting from its being the only bidder to have complied with the Procurement Integrity requirements, because in doing so it assumed additional legal obligations, and is now in a legally different position vis a vis the government, than any other bidder. We disagree. If EASI, as the fourth low bidder, were in fact to be determined to be the low responsive bidder, as we have already stated, the Army would delete the Certificate clauses by administrative change, and EASI would not be

obligated to comply with the OFPP Act. Accordingly, since the contract has yet been awarded, the requirement for a Certificate of Procurement Integrity may be disregarded.

The protest is denied.

for
James F. Hinchman
General Counsel